

No 620. time of the alleged intromission, to whose executors the half of the goods will pertain. It was *alleged* by the pursuer, That she offered her to prove, that her husband was dead, and that she was a free woman and widow, and that the sheep were her own proper goods, and she being *in libello*, ought to be preferred; and the defender *contended*, That he ought to be preferred, in respect he offers him to prove the husband to be living, and being presumed to be in life; notwithstanding, the Lords preferred the pursuer.

*Auchinleck, MS. p. 156.*

1665. July 14.

MATHIESON *against* GIB.

No 621.

Witnesses admitted to prove a bargain of victual after 12 years.

JAMES MATHIESON having obtained a decret before the Commissaries of Edinburgh against Gib, he suspends, and alleges it was not a cause consistorial, being a bargain of victual, and that it was not probable any other ways but by his oath, now after 12 or 13 years, in respect of the act of Parliament anent house mails and others, which comprehends this case.

THE LORDS repelled the allegiance, and found that bargain of victual not comprehended under that act of Parliament.

*Stair, v. 1. p. 297.*

1667. November 28. CAPTAIN BOOD *against* STRACHAN.

No 622.

That a person sold the articles of a ship belonging to another, allowed to be proved by witnesses.

CAPTAIN BOOD, Captain of one of his Majesty's frigates, pursues George Strachan, who had commanded that frigate for a time, and was sent a voyage therewith, from Brassie Sound to London, to restore a part of the out-reik of the ship, which he had not delivered, but had excepted in his discharge as being worn, stolen, or lost; and now it was offered to be proved, that he sold and disposed upon the same particulars he so reserved. The defender *alleged*, Absolvitor from such particulars as he condescended upon, because he did ware out a considerable sum of money for repairing the out-reik, and necessaries to the ship during the voyage, for which, in case of necessity, he might have sold a part of the out-reik. *2do*, Albeit he might not have sold the same, yet he may retain, or compensate the price thereof, with what he wared out necessarily and profitably for the out-reik of the ship. *3tio*, He offered him to prove, that such parts of the out-reik in question as he should condescend upon, were worn and stolen, which being his defence, he ought to be preferred in the probation unto the pursuer, who ought to have no other probation against him, being a person intrusted, but his own oath, much less a contrary probation by witnesses, that they were not lost, but disposed upon by the defender.